UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

D-1 Futoshi Higashida,

Defendant.

No. 16-cr-20641

Hon. Gershwin A. Drain

Offenses:
18 U.S.C. §§ 371 and 1519
Conspiracy to Obstruct an Investigation of a Matter within U.S. Jurisdiction

18 U.S.C. § 1512(b)(2)(B)
Attempted Obstruction of Justice

Joint Sentencing Memorandum

The United States of America, by its undersigned attorneys, and Defendant Futoshi Higashida, by his undersigned attorney, respectfully submit this Joint Sentencing Memorandum. For the reasons set forth below, the United States and the Defendant respectfully request that the Court accept the Defendant's guilty plea pursuant to Fed. R. Crim. P. 11(c)(1)(C) and sentence the Defendant in accordance with the terms of the plea agreement. Pursuant to the plea agreement, the United States and the Defendant jointly recommend that the Court impose a sentence requiring a period of imprisonment of 14 months, a criminal fine of $7,500, no period of supervised release, and no order of restitution (the "Agreed-Upon

Sentence”). The parties submit that, upon consideration of the applicable advisory Guidelines range and the factors set forth in 18 U.S.C §3553(a), the Agreed-Upon Sentence is the appropriate result in this case.

I. BACKGROUND OF THE OFFENSES

The Defendant, along with Mikio Katsumaru[1], knowingly participated in a conspiracy with other individuals located in the United States and Japan from at least as early as June 2008 until at least September 2012 to destroy, conceal, and cover up records and documents with the intent to impede, obstruct, and influence a contemplated investigation of a matter within the jurisdiction of an agency or department of the United States. From at least as early as June 2008 until in or about July 2011, the Defendant was employed by Company A as a manager in the Business Administration and Marketing Department. During this period, the Defendant reported to Katsumaru. From in or about August 2011 until at least September 2012, the defendant was employed by Company B as Vice President, and later President.

Company A was a corporation based in Japan. Company B was a joint venture owned by Company A and another company with an office located in Novi, Michigan. Company A and Company B manufactured and sold automotive body sealing parts to automobile manufacturers in the United States and elsewhere.

[1] Mikio Katsumaru, a citizen and resident of Japan, was also charged for his participation in the conspiracy charged in Count One of the Indictment, but has not appeared in this case.

Under the Sherman Antitrust Act, Title 15, United States Code, Section 1, it was and is a crime for employees of competitor companies to conspire with each other to suppress and eliminate competition in unreasonable restraint of interstate and foreign trade and commerce ("antitrust crime"). The Federal Bureau of Investigation ("FBI") was and is an agency and department of the United States with jurisdiction to investigate violations of federal criminal laws, including antitrust crimes. The United States Department of Justice ("DOJ") was and is an agency and department of the United States with jurisdiction to investigate and prosecute violations of federal criminal laws, including antitrust crimes.

Company A and three of its employees were separately charged in the Eastern District of Kentucky with an antitrust crime on September 1, 2016 and October 8, 2015 respectively, for knowingly participating in a conspiracy to suppress and eliminate competition for automotive body sealing parts sold to certain automobile manufacturers in the United States and elsewhere.

The primary purpose of the conspiracy led by the Defendant and Katsumaru was to make documents and records reflecting communications with competitors unavailable in order to impede, obstruct, and influence a contemplated DOJ and FBI investigation of antitrust crimes by Company A, Company B, and their employees. In furtherance of the conspiracy, the Defendant, Katsumaru, and other co-conspirators committed and caused to be committed overt acts in the Eastern

District of Michigan and elsewhere, including sending instructions to employees of Company A and Company B to delete e-mails and electronic records referring to communications with competitors. Though the Defendant himself has not been charged with the underlying antitrust crime, he explained the potential consequences if the companies and their employees were to be caught for antitrust crimes—namely, criminal antitrust investigations and prosecutions in the United States—and used this information as a means of attempting to persuade other employees to delete e-mails and phone records.

Additionally, on or about September 25, 2012, in the Eastern District of Michigan, the Defendant knowingly attempted to corruptly persuade his subordinate employee to delete phone numbers and call records from his cellular telephone and data from his computer that would reflect communications with competitors. The Defendant sent these instructions with the intent to cause his subordinate employee to impair his computer's and cell phone's integrity and availability for use in a contemplated prosecution of Company B and its employees for an antitrust crime before a court of the United States.

II. THE DEFENDANT'S HISTORY AND CHARACTERISTICS

The Defendant is a 53 year old Japanese citizen with no criminal history. He is married and has two children: one daughter, age 26, and one son, age 24. He graduated from Pierce College in the United States with an associate's degree in business in 1987. He began his employment at Company A in 1988. The Defendant is currently employed as Vice President of Company C, a separate, wholly owned U.S.-based subsidiary of Company A. He is in good health and is not under any medical treatment.

The Defendant is the second individual to plead guilty in the government's investigation of the automotive body sealing products industry. The Defendant has committed to cooperate in the government's ongoing investigation and prosecution of violations of federal criminal law in that industry.

III. THE PLEA AGREEMENT AND SENTENCING GUIDELINES

In the plea agreement and the attached Sentencing Guidelines Worksheet, the parties stipulated to the appropriate application of the Sentencing Guidelines, as well as to the Agreed-Upon Sentence, which is below the Guidelines range.

For Count One:

- The controlling Guideline, U.S.S.G. § 2X1.1(a), states that the base offense level for a conspiracy is the base offense level for the substantive offense, which is obstruction of justice. The controlling Guideline applicable for obstruction of justice offenses is U.S.S.G. § 2J1.2(a), pursuant to which the base offense level is 14;

- The conspiracy was extensive in scope, planning, and preparation, within the meaning of U.S.S.G. § 2J1.2(b)(3), which increases the offense level by 2;
- The conspiracy was not fully completed by the co-conspirators, within the meaning of U.S.S.G. § 2J1.1(b)(2), which decreases the offense level by 3; and
- The Defendant qualifies as an organizer or leader of the criminal conspiracy that involved five or more participants and was otherwise extensive, within the meaning of U.S.S.G § 3B1.1(a), which increases the offense level by 4.

For Count Two, the controlling Guideline is U.S.S.G. § 2J1.2, pursuant to which the base level is 14. There are no Guideline adjustments applicable to this count.

Because the two counts involve substantially the same harm, within the meaning of U.S.S.G § 3D1.2, they are grouped together into a single Group. Pursuant to U.S.S.G § 3D1.3(a), the offense level applicable to this Group is the highest offense level of the two counts, which is 17.

The United States agrees that the Defendant has timely accepted responsibility and at sentencing will move that the Court grant a three-level reduction to his Offense Level, pursuant to U.S.S.G. § 3E1.1(b). With that reduction, the Defendant's Total Offense Level is 14. The Defendant has no criminal history. Accordingly, based on a Total Offense Level of 14 and a Criminal History Category I, the Guidelines imprisonment range is 15 to 21 months.

In the plea agreement, the United States also agreed to make a motion pursuant to U.S.S.G. § 5K1.1, for a one-level departure from the bottom of the Guidelines range and to recommend a sentence of 14 months' imprisonment based on the Defendant's substantial assistance. The United States separately will make that motion and apprise the Court of the Defendant's substantial assistance.

Finally, the United States, which is the victim of the Defendant's obstructive conduct, is not seeking restitution from the Defendant in this case. Thus, the parties agree that no restitution should be ordered. *See* 18 U.S.C. § 3553(a)(7).

IV. CONSIDERATION OF 18 U.S.C. §3553(a) FACTORS

The parties submit that, in addition to the nature and circumstances of the offense, the history and characteristics of the Defendant, and the Guidelines range, as outlined above, the most relevant 3553(a) factors that the Court should consider in this case are the need to avoid unwarranted disparities in sentencing of similarly situated defendants and the need for the sentence to provide deterrence and just punishment.

Following the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), the Sentencing Guidelines are advisory and not binding on this

Court's sentencing decision. While "a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range," the Guidelines are merely the "starting point and the initial benchmark . . ." *Gall v. United States*, 552 U.S. 38, 49 (2007). The Court must "consider all of the § 3553(a) factors" and "must make an individualized assessment based on the facts presented." *Gall*, 552 U.S. at 49-50. After the decisions of the Supreme Court in *Gall* and *Kimbrough v. United States*, 552 U.S. 85 (2007), a sentencing court must consider the factors set forth in 18 U.S.C. § 3553(a) and impose a sentence "sufficient, but not greater than necessary" to comport with the goals of criminal justice. *United States v. Denny*, 653 F.3d 415, 420 (6th Cir. 2011).

Here, the Defendant's sentence is similar to that of many other defendants who have been prosecuted as part of the Antitrust Division's investigations into bid rigging and price fixing conspiracies in the automotive parts industry. The government's investigations have led to 65 individuals being charged, and 31 of those individuals pleading guilty. The range of sentences imposed on those 31 individuals has been between a year and a day and 24 months' imprisonment. The Agreed-Upon Sentence of 14 months' imprisonment, which falls within the range of sentences, is two months longer than the sentence imposed on the one other individual charged solely with an obstruction of justice offense, *see United States v. Fujitani*, No. 14-cr-20087 (E.D. Mich. 2014) (one year and one day sentence after pleading guilty to a one count information charging a violation of 18 U.S.C. § 1512(c)(1)), and is one month longer than the sentence imposed on another defendant charged in these investigations who had a comparable pre-U.S.S.G. § 5K1.1 Guidelines calculations. *See United States v. Okuda*, No. 2:13-cr-41-DLB-CJS (E.D.Ky. 2013) (13-month sentence where pre-U.S.S.G. § 5K1.1 Guidelines imprisonment range was 15 to 21 months).

In addition to avoiding unwarranted disparities across similarly situated defendants, the Agreed-Upon Sentence reflects the nature and seriousness of the offense and supports deterrence by requiring a term of significant imprisonment. Congress views deterrence as particularly important for white-collar crimes such as the charged crimes in this case, and the imposition of a significant term of imprisonment deters other professionals from engaging in similar criminal activity. *See United States v. Martin*, 455 F.3d 1227, 1239 (11th Cir. 2006).

Finally, the Agreed-Upon Sentence will provide just punishment by accounting for both the aggravating and mitigating factors in this case. *See* § 3553(a)(2)(A). It reflects the extensive scope, planning, and duration of the conspiracy, as well as the Defendant's leadership role in the conspiracy and his management and supervision of other participants. At the same time, it reflects the Defendant's lack of prior criminal history, his acceptance of responsibility for his criminal conduct, and his willingness to cooperate with the government's ongoing investigation and prosecution of other individuals in the automotive body sealing industry.

V. COMPLIANCE WITH FED. R. CRIM. P. 11(b)(1)(O)

Consistent with Fed. R. Crim. P. 11(b)(1)(O), Paragraph 2 of the plea agreement stipulates that the guilty plea may have consequences with respect to the Defendant's immigration status as a non-citizen of the United States. The Defendant has affirmed that he wants to plead guilty even if the consequence is his removal from the United States and denial of admission to the United States in the future.

VI. CONCLUSION

For all these reasons, the parties jointly recommend that the Court impose a sentence requiring a period of imprisonment of 14 months assigned to a Federal Minimum Security Camp (and specifically to the Federal Prison Camp at Taft, California), a criminal fine of $7,500, no period of supervision, and no order of restitution.

Respectfully Submitted,

January 23, 2017
Date

/s/ Andre M. Geverola

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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2017, I electronically filed the foregoing documents to the Clerk of Court using the ECF System, which will send notification of such filing to counsel for Defendant.

/s/ Chester C. Choi
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